

Draft 4/22/05 - Subject to Revision and Approval

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

DRAFT 04/22/05

IN THE MATTER OF:
Cornell-Dubilier Electronics, Inc. Superfund
Site
South Plainfield, Middlesex, New Jersey

Dana Corporation,

Respondent

ADMINISTRATIVE AGREEMENT AND
ORDER ON CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

U.S. EPA Region 2
CERCLA Docket No. _____

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 9607 and
9622.

RI/FS ADMINISTRATIVE ORDER ON CONSENT



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ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
Operable Unit No. 3

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Dana Corporation, ("Respondent"). The Order concerns the preparation and performance of a remedial investigation and feasibility study ("RI/FS") for the operable unit consisting of Site groundwater at the Cornell-Dubilier Electronics, Inc. Site located at and in the vicinity of 333 Hamilton Boulevard in South Plainfield, New Jersey ("Site") and the reimbursement of future response costs incurred by EPA in connection with the RI/FS.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated on November 23, 2004 by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by EPA Region 2 Delegation Nos. 14-14-C and 14-14-D.

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the United States Fish & Wildlife Service and the National Oceanic and Atmospheric Administration on April 1, 2005, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal [insert if applicable, "and/or State"] trusteeship.

4. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of fact, conclusions of law and determinations in Sections V and VI of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including,

but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

7. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondent to this Order.

III. STATEMENT OF PURPOSE

8. In entering into this Order, the objectives of EPA and Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a RI as more specifically set forth in the Statement of Work ("SOW") attached as Appendix A to this Order; (b) to identify and evaluate remedial alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a FS as more specifically set forth in the SOW in Appendix A to this Order; and (c) to recover response and oversight costs incurred by EPA with respect to this Order.

9. The Work conducted under this Order is subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all Work under this Order in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall

run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Order as provided in Section XXIX.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, the costs incurred pursuant to Paragraph 57 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 43 (emergency response), and Paragraph 86 (Work takeover).

g. "Institutional Controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. "Operable Unit 3" or "OU3" shall mean response actions relating to

contaminated Site groundwater.

l. "Order" shall mean this Administrative Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

m. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral. References to paragraphs in the SOW will be so identified (for example, "SOW paragraph 15").

n. "Parties" shall mean EPA and Respondent.

o. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

p. "Respondent" shall mean Dana Corporation

q. "Section" shall mean a portion of this Order identified by a Roman numeral. References to sections in the SOW will be so identified; for example as "SOW Section V."

r. "Site" shall mean the Cornell-Dubilier Electronics, Inc. Superfund Site, encompassing a former manufacturing facility of approximately 26 acres located at 333 Hamilton Boulevard, South Plainfield, Middlesex County, New Jersey and the areal extent of the contamination from the facility, including contaminated residential, commercial and municipal properties located in the vicinity of the facility and contaminated groundwater and sediments in the Bound Brook. The Site is depicted generally on the map attached as Appendix B.

s. "State" shall mean the State of New Jersey.

t. "Statement of Work" or "SOW" shall mean the Statement of Work for development of a RI/FS for OU3 of the Site, as set forth in Appendix A to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

u. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

v. "Work" shall mean all activities Respondent is required to perform under this

Order, except those required by Section XIV (Retention of Records).

V. FINDINGS OF FACT

11. The Cornell-Dubilier Electronics, Inc. Superfund Site consists of a former manufacturing facility of approximately 26 acres, located at 333 Hamilton Boulevard, South Plainfield, Middlesex County, New Jersey and the areal extent of the contamination from the facility, including contaminated residential, commercial and municipal properties located in the vicinity of the facility, contaminated groundwater, and contaminated sediments of the Bound Brook.

12. Respondent was, from sometime after 1904 until June 1956, the owner of the facility, and from sometime after 1904 until approximately 1929, the operator of the facility. From approximately 1936 to 1956, Cornell-Dubilier Electronics, Inc. ("CDE") leased the facility from Respondent and manufactured capacitors using polychlorinated biphenyls ("PCBs") at the facility. CDE used trichloroethylene ("TCE") for degreasing the capacitors. During that time, hazardous substances, including PCBs and volatile organic compounds ("VOCs"), were disposed of at the Site by CDE.

13. PCBs have been detected in the groundwater, soils and in building interiors at the facility, at adjacent residential, commercial, and municipal properties, and in the surface water and sediments of the Bound Brook. High levels of VOCs have been found in the facility soils and in groundwater. Excavations in the undeveloped portion of the facility property uncovered corroded and/or burned capacitors, white and blue crystalline powder, electrical components, and other materials. PCB concentrations from samples collected in this area are typically significantly elevated.

14. During previous EPA investigations, 96 surface soil samples and 59 subsurface soil samples were collected at the facility, including samples collected from test pits excavated within the central portion of the property. The results of the sample analyses revealed that elevated levels of PCBs, VOCs, and inorganic chemicals were present at the Site. PCBs are the most prevalent contaminants found on the property. Surface and subsurface soil sample analytical results indicated the presence of PCB compounds in 92 percent of the samples collected. Four individual Aroclors (-1242, -1248, -1254, and -1260) were detected at the property. Surface soil sampling revealed PCB concentrations at a maximum concentration of 51,000 ppm. Of the 96 surface soil samples collected, 46 samples had concentrations of PCBs greater than 10 ppm and 15 samples had concentrations greater than 500 ppm. Subsurface soil sampling revealed PCB concentrations at a maximum concentration of 130,000 ppm. Of the 59 subsurface soil samples collected, 16 samples had concentrations of PCBs greater than 10 ppm and 8 samples had concentrations of PCBs greater than 500 ppm.

15. Groundwater sampling results have shown that groundwater at the Site is very highly contaminated with VOCs and PCBs. Soils at the former facility property contaminated with

PCBs and VOCs appear to be an ongoing source of groundwater contamination, with PCBs likely present as a result of high VOC content and cosolvency effects. Concentrations of TCE as high as 120,000 ppb and PCBs as high as 84 ppb were measured in the groundwater samples.

16. Water encountered in the overburden soil and weathered bedrock intervals by EPA was sampled to characterize potential source areas, to evaluate potential zones of contamination, and to identify potential contamination migration pathways. PCBs, PCB congeners, VOCs, SVOCs, pesticides, and metals were detected at elevated concentrations in the perched water sampled during excavation of test pits at the facility property and installation of the groundwater monitoring wells.

17. Groundwater and surface water in the area are both current and potential future sources of drinking water. The groundwater beneath the facility property is classified by NJDEP as Class IIA, a potential source of drinking water, and potable water wells for the Middlesex Water Company and the Elizabethtown Water Company facility are located within four miles of the Site.

18. PCBs and VOCs, including TCE, are the main contaminants of concern for Site groundwater. The National Toxicity Program classifies PCBs and TCE as being reasonably anticipated to be human carcinogens.

19. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 28, 1998. 63 Fed. Reg. 40182-01.

20. On March 25, 1997, EPA issued Unilateral Administrative Order ("UAO"), Index No. II-CERCLA-97-0109, to D.S.C. of Newark Enterprises, Inc. The UAO required the installation and maintenance of site stabilization measures to limit migration of contaminants from the former CDE facility. These actions included paving driveways and parking areas to minimize dust, installing a security fence, and implementing drainage controls to limit surface run-off. The work required under the UAO was substantially completed in the fall of 1997.

21. From October 1997 through May 1998, EPA collected soil and indoor dust samples from residential and commercial properties in the vicinity of the former Cornell-Dubilier Electronics facility. EPA and the Agency for Toxic Substances and Disease Registry reviewed the data obtained from this sampling and concluded that exposure to PCBs in dust and soil posed a potential health concern for residents at several of the properties tested.

22. Accordingly, EPA entered into three Administrative Orders on Consent ("AOCs") to address the removal of contaminated soil from properties in the vicinity of the former Cornell-Dubilier Electronics facility:

- a. On August 6, 1998, EPA entered into an AOC, Index No. II-CERCLA-98-0115 with

D.S.C. of Newark Enterprises, Inc. and CDE for removal of contaminated soil from six properties on Garibaldi Avenue, Spicer Avenue, and Hamilton Boulevard. Removal of PCB-contaminated soil from these properties was completed in September 1999.

b. On February 23, 1999, EPA entered into an AOC, Index No. II-CERCLA-99-2006 with CDE and Dana Corporation for removal of contaminated soil from seven properties on Delmore Avenue and Hamilton Boulevard. Removal of PCB-contaminated soil from these properties was completed in January 2000.

c. On June 26, 2000, EPA entered into an AOC, Index No. II-CERCLA-2000-2005 with D.S.C. of Newark Enterprises, Inc. requiring the removal of PCB-contaminated soil from one property on Spicer Avenue. D.S.C. of Newark Enterprises, Inc. failed to perform the work required under the AOC. On June 22, 2001, EPA notified D.S.C. of Newark Enterprises, Inc. that EPA would perform the work.

23. In March 1999, EPA began a RI/FS at the Site, pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300. In order to study and undertake response activities in phases, EPA divided the Site into operable units ("OUs"). The RI/FS for OU1 was completed in August 2001, and the RI/FS for OU2 was completed in April 2004. This Order addresses OU3, the contaminated groundwater at the Site.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, EPA has determined that:

24. The Cornell-Dubilier Electronics, Inc. Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. The PCBs and TCE found at the Site, as identified in the Findings of Fact above, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. The conditions described in Paragraphs 13 to 16 of the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28. Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622. Respondent is a person who at the time of disposal of any hazardous substances owned or operated the Site. Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

29. The actions required by this Order are necessary to protect the public health, welfare or the environment, are in the public interest, CERCLA Section 122(a), 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, CERCLA Sections 104(a)(1) and 122(a), 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, CERCLA Section 122(a), 42 U.S.C. § 9622(a).

30. EPA has determined that Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Order.

VII. AGREEMENT AND ORDER

31. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

32. Selection of Contractors, Personnel. All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Order, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Order. If EPA disapproves in writing of any person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent. During the course of the RI/FS, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right

to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

33. Within 10 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 21 days following EPA's disapproval. Respondent shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 14 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

34. EPA has designated Peter Mannino of the Emergency and Enforcement Response Division, New Jersey Superfund Branch, Region 2, as its Project Coordinator. EPA will notify Respondent of a change of its designated Project Coordinator. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the Project Coordinator at:

Cornell-Dubilier Electronics Site Project Coordinator
New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, NY 10007
Attn: Peter Mannino

35. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Order shall not be cause for the stoppage or delay of Work.

36. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the RI/FS Work Plan.

IX. WORK TO BE PERFORMED

37. Respondent shall conduct the RI/FS in accordance with the provisions of this Order, the SOW, CERCLA, the NCP and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. The RI shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The FS shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). Upon request by EPA, Respondent shall submit in electronic form all portions of any plan, report or other deliverable Respondent is required to submit pursuant to provisions of this Order.

a. Scoping. EPA will determine the Site-specific objectives of the RI/FS and devise a general management approach for the Site, as stated in the attached SOW. Respondent shall conduct the remainder of scoping activities as described in the attached SOW and referenced guidances. At the conclusion of the project planning phase, Respondent shall provide EPA with the following plans, reports and other deliverables:

(1) Preliminary Conceptual Site Model. Within 45 days after the Effective Date of this Order, Respondent shall submit to EPA a preliminary conceptual site model to support the development of the RI/FS Work Plan.

(2) RI/FS Work Plan. Within 45 days after EPA's authorization to proceed based on the preliminary conceptual site model, Respondent shall submit to EPA a complete RI/FS Work Plan. Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the RI/FS Work Plan shall be incorporated into and become enforceable under this Order. Pursuant to the SOW, the RI/FS Work Plan shall include a Field Sampling and Analysis Plan ("FSP"), a Quality Assurance Project Plan ("QAPP") and a Health and Safety Plan ("HSP") as described in Paragraphs 37(a)(2)(i) and (ii) below.

(i) Field Sampling and Analysis Plan, Quality Assurance Project

Plan. Within 45 days after EPA's authorization to proceed based on the preliminary conceptual site model, Respondent shall submit a FSP and a QAPP to EPA for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). The FSP and QAPP shall be prepared as described in the Statement of Work and guidances, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-02/009, December 2002 or subsequently issued guidance), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001 or subsequently issued guidance). Upon approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the FSP and QAPP shall be incorporated into and become enforceable under this Order.

(ii) Site Health and Safety Plan. Within 45 days after EPA's authorization to proceed based on the preliminary conceptual site model, Respondent shall submit for EPA review and comment a Site HSP that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance). In addition, the HSP shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the RI/FS.

b. Community Relations Plan. EPA has prepared a community relations plan for the Site and will make revisions to the Plan as necessary and in accordance with EPA guidance and the NCP. As requested by EPA, Respondent shall provide information supporting EPA's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

c. Site Characterization. Following EPA approval or modification of the RI/FS Work Plan, Respondent shall implement the provisions of the RI/FS Work Plan to characterize the Site. Respondent shall complete Site characterization and submit all plans, reports and other deliverables in accordance with the schedules and deadlines established in this Order, the SOW, and/or the EPA-approved RI/FS Work Plan.

d. Baseline Human Health Risk Assessment. Respondent will perform the Baseline Human Health Risk Assessment ("Risk Assessment") in accordance with the SOW, RI/FS Work Plan and applicable EPA guidance, including but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); or subsequently issued guidance.

e. Draft RI Report. In accordance with the schedule in the approved RI/FS Work Plan, Respondent shall submit to EPA for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions), a Draft RI Report consistent with the SOW and RI/FS Work Plan. The Draft RI Report shall also contain the Risk Assessment.

f. Treatability Studies. Respondent shall conduct treatability studies, except where Respondent can demonstrate to EPA's satisfaction that they are not needed. The major components of the treatability studies are described in the SOW. In accordance with the schedules or deadlines established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondent shall provide EPA with the following plans, reports, and other deliverables for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Identification of Candidate Technologies Memorandum. This memorandum shall be submitted within 45 days of EPA's determination that treatability testing is required.

(2) Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within 45 days thereafter or as specified by EPA, Respondent shall submit a Treatability Testing Statement of Work ("TTSOW").

(3) Treatability Testing Work Plan. Within 30 days after submission of the TTSOW, Respondent shall submit a Treatability Testing Work Plan, including a schedule. The work plan may take the form of a separate Treatability Testing Work Plan, or an amendment to the RI/FS Work Plan previously submitted. The Treatability Testing Work Plan shall include a Treatability Study Field Sampling and Analysis Plan, and may include a Treatability Study Quality Assurance Project Plan and Treatability Study Site Health and Safety Plan if EPA determines that the RI/FS QAPP or HSP is not adequate for defining the activities to be performed during the treatability test.

(4) Treatability Study Evaluation Report. Within 45 days after completion of any treatability testing, Respondent shall submit a treatability study evaluation report as provided in the TTSOW and Treatability Testing Work Plan.

g. Development and Screening of Alternatives. Respondent shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. In accordance with the schedules or deadlines established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondent shall provide EPA with the following deliverable for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Remedial Alternatives Screening Technical Memorandum. The Memorandum shall summarize the development and screening of remedial alternatives.

h. Detailed Analysis of Alternatives. Respondent shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FS Work Plan. In accordance with the deadlines or schedules established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondent shall provide EPA with the following deliverables and presentation for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Remedial Alternatives Evaluation Technical Memorandum and Presentation to EPA. Within 45 days after EPA's approval of the RI Report, Respondent will submit a report on comparative analysis to EPA. This report shall include a discussion of the institutional controls identified in the Remedial Alternatives Screening Technical Memorandum as potential remedial actions, and shall (1) state the objectives (i.e., what will be accomplished) for the Institutional Controls; (2) determine the specific types of Institutional Controls that can be used to meet the remedial action objectives; (3) investigate when the Institutional Controls need to be implemented and/or secured and how long they must be in place; (4) research, discuss and document any agreement with the proper entities (e.g., state, local government entities, local landowners, conservation organizations, Respondent) on exactly who will be responsible for securing, maintaining and enforcing the Institutional Controls. Within 21 days of submitting the report on comparative analysis, Respondent will present to EPA a summary of the findings of the remedial investigation and remedial action objectives, and present the results of the nine criteria evaluation and comparative analysis, as described in the SOW.

(2) Draft FS Report. Within 30 days after the presentation to EPA described in Paragraph 37(i)(1), Respondent shall submit to EPA a Draft FS Report which reflects the findings in the Risk Assessment. Respondent shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

38. Upon receipt of the draft FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls.

39. Modification of the RI/FS Work Plan.

a. If at any time during the RI/FS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within 30 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into plans, reports and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent

shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify or amend the RI/FS Work Plan in writing accordingly. Respondent shall perform the RI/FS Work Plan as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved RI/FS Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FS. Respondent agrees to perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FS.

d. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 7 days of receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

40. Off-Site Shipment of Waste Material. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by

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Respondent following the award of the contract for the RI/FS. Respondent shall provide the information required by Subparagraph 40.a and 40.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

41. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

42. Progress Reports. In addition to the plans, reports and other deliverables set forth in this Order, Respondent shall provide to EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Order during that month, (2) include all results of sampling and tests and all other data received by Respondent, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

43. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the EPA Regional Emergency 24-hour telephone number at (732) 548-8730 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site,

Respondent shall immediately notify the EPA Project Coordinator, or the EPA Regional Emergency 24-hour telephone number at (732) 548-8730 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

44. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Order, in a notice to Respondent EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

45. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 44(a), (b), (c) or (e), Respondent shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 44(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

46. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 44 and 45.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless

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otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition or modification of the following deliverables: Preliminary Conceptual Site Model, RI/FS Work Plan (which includes the FSP, QAPP and HSP), Draft RI Report, Treatability Testing Work Plan, and Draft FS Report. While awaiting EPA approval, approval on condition or modification of these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Order, the SOW and the RI/FS Work Plan.

d. For all remaining deliverables not listed above in subparagraph 46(c), Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, with any task, activity or deliverable at any point during the RI/FS.

47. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

48. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superceded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superceded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

49. In the event that EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

50. All plans, reports, and other deliverables submitted to EPA under this Order shall,

upon approval or modification by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Order, the approved or modified portion shall be incorporated into and enforceable under this Order.

51. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

52. Quality Assurance. Respondent shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the QAPP and guidances identified therein. Respondent will assure that field personnel used by Respondent is properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

53. Sampling.

a. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's behalf, during the period that this Order is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 42 of this Order. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall verbally notify EPA at least 28 days prior to conducting significant field events as described in the SOW or RI/FS Work Plan. At EPA's verbal or written request, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Order. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

54. Access to Information.

a. Respondent shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant

facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Order for which Respondent asserts business confidentiality claims.

c. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

55. In entering into this Order, Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Order or any EPA-approved RI/FS Work Plans. If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

56. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to

the Site, or such other property, for the purpose of conducting any activity related to this Order.

57. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 45 days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. If Respondent cannot obtain access agreements, EPA may either (i) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the Order. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

58. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

59. Respondent shall comply with all applicable local, state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

60. During the pendency of this Order and for a minimum of 10 years after commencement of construction of any remedial action, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy

to the contrary. Until 10 years after commencement of construction of any remedial action, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature or description relating to performance of the Work.

61. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such documents, records or other information, and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or other information; 2) the date of the document, record, or other information; 3) the name and title of the author of the document, record, or other information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or other information; and 6) the privilege asserted by Respondent. However, no documents, records or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

62. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally. However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of Respondent that have not been disputed in accordance with this Section.

64. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 20 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

65. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this

Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the level of the Director of ERRD, Region 2 or higher will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

XVI. STIPULATED PENALTIES

66. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with any of the requirements of this Order specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Order or any activities contemplated under any RI/FS Work Plan or other plan approved under this Order identified below, in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

67. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Subparagraph 67(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2000	1 st through 14 th day
\$ 4000	15 th through 30 th day
\$ 6000	31 st day and beyond

b. Compliance Milestones

1. Submission of the name of the Project Coordinator to EPA pursuant to Section VIII of this Order;
2. Payment of Future Response Costs pursuant to Section XVIII of this Order;
3. Payment of Stipulated Penalties pursuant to Section XVI of this Order;
4. Establishing an escrow account pursuant to Paragraph 82 in the event of dispute concerning payment of Future Response Costs;

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5. Establishing Assurance of Ability to Complete Work pursuant to Section XXVI of this Order;
6. Submission of the Preliminary Conceptual Site Model;
7. Submission and, if necessary, revision and resubmission of the RI Work Plan;
8. Submission and, if necessary, revision and resubmission of the Treatability Testing Statement of Work;
9. Submission and, if necessary, revision and resubmission of the Treatability Testing Work Plan;
10. Submission and, if necessary, revision and resubmission of the Treatability Study Evaluation Report;
11. Submission and, if necessary, revision and resubmission of the RI Report;
12. Submission and, if necessary, revision and resubmission of the FS Report.

68. Stipulated Penalty Amounts - Reports. Stipulated penalties shall accrue in the amount of \$1,000 per violation per day for failure to submit timely or adequate monthly progress reports pursuant to Paragraph 42 or any interim deliverables not specifically referred to in Paragraph 67.

69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 of Section XX (Reservation of Rights by EPA), Respondent shall be liable for a stipulated penalty in the amount of \$200,000.

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official designated in Paragraph 65 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

71. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

72. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid in accordance with the payment procedures set forth in Paragraph 80, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 02-GZ, the EPA Docket Number _____, and the name and address of the party making payment. At the time of payment, Respondent shall send notice that payment has been made to the EPA Project Coordinator, Site Attorney and Regional Financial Management Officer in accordance with Section 80(b).

73. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

74. Penalties shall continue to accrue as provided in Paragraph 70 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

75. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 70.

76. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 86. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVII. FORCE MAJEURE

77. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order

despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

78. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

79. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

80. Payments of Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIOS Report. Respondent shall make all payments within 30 days of Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 81 of this Order. Respondent shall make all payments required by this Paragraph by EFT to Mellon Bank, Pittsburgh, Pennsylvania, by providing the following information to its bank:

- (i) Amount of payment;
- (ii) Title of Mellon Bank Account to receive the payment: EPA;
- (iii) Account Code for Mellon Bank Account receiving the payment: 9108544;
- (iv) Mellon Bank ABA Routing Number: 043000261;
- (v) Name of Respondent;

- (vi) Docket Number CERCLA ____; and
- (viii) Site/Spill Identifier: 02-GZ.

b. At the time of payment, Respondent shall send notice that payment has been made to the EPA Project Coordinator, Site Attorney, and the Regional Financial Management Officer, as follows:

Cornell-Dubilier Site Remedial Project Coordinator
New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, NY 10007
Attn: Peter Mannino

Cornell-Dubilier Site Attorney
Office of Regional Counsel
New Jersey Superfund Branch
U.S. EPA, Region 2
290 Broadway, 17th Floor
New York, NY 10007
Attn: Sarah Flanagan

Chief, Financial Management Branch
U.S. EPA, Region 2
290 Broadway, 29th Floor
New York, NY 10007-1866

c. The total amount to be paid by Respondent pursuant to Subparagraph 80(a) shall be deposited in the Cornell-Dubilier Electronics, Inc. Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

81. If Respondent does not pay Future Response Costs within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 80.

82. Respondent may contest payment of any Future Response Costs under Paragraph 80 if it determines that EPA has made a mathematical error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 80. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 80. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 80. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

83. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Order and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

84. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or

threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

85. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

86. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

87. Respondent covenants not to sue and agree not to assert any claims or causes of

action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs.

88. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 85(b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

89. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

90. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

91. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

92. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION AND RIGHTS

93. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Order. The “matters addressed” in this Order are the Work and Future Response Costs.

94. The Parties agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the United States for the Work performed under this Order and for Future Response Costs.

95. Except as provided in Section XXI (Covenant Not to Sue by Respondent), nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or demands against any person not a party to this Order for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that provide contribution protection to such persons.

XXIV. INDEMNIFICATION

96. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

97. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

98. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or

reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

99. At least 15 days prior to commencing any on-site Work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance with limits of \$1,500,000, combined single limit, and automobile liability insurance with limits of \$1,000,000, combined single limit, naming EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

100. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$1,500,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment for and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment for and/or performance of the Work;
- e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a corporate guarantee to perform the Work by Respondent, including a demonstration that Respondents satisfies the requirements of 40 C.F.R. Part 264.143(f).

101. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 100, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

102. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 100.e. or 100.f. of this Order, Respondent shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Order, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of \$1,500,000 for the Work at the Site shall be used in relevant financial test calculations.

103. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 100 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

104. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. INTEGRATION/APPENDICES

105. This Order, its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Order and become incorporated into and enforceable under this Order constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order:

“Appendix A” is the SOW.

“Appendix B is the map of the Site.

XXVIII. ADMINISTRATIVE RECORD

106. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local or other federal authorities concerning selection of the response action. At EPA’s discretion, Respondent shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

107. This Order shall be effective 5 days after the Order is signed by the Director of the Emergency and Remedial Response Division, EPA Region 2.

108. This Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Order.

109. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

110. When EPA determines that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including but not limited to payment of Future Response Costs and record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the RI/FS Work Plan if appropriate in order to correct such deficiencies, in accordance with Paragraph 39 (Modification of the RI/FS Work Plan). Failure by Respondent to implement the approved modified RI/FS Work Plan shall be a violation of this Order.

Agreed this ____ day of _____, 2005.

For Respondent _____

By: _____

Title: _____

Draft 4/22/05 - Subject to Revision and Approval

It is so ORDERED AND AGREED this _____ day of _____, 2005.

BY: _____ DATE: _____

Name

Director, Emergency and Remedial Response Division

Region 2

U.S. Environmental Protection Agency

EFFECTIVE DATE: _____